

[2023] PBSA 41

Application for Set Aside by Fielding

Application

1. This is an application by Fielding (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (dated 23 April 2023), the application for set aside (dated 5 May 2023), and supplementary submissions (dated 8 June 2023).

Background

3. On 21 May 2021, the Applicant received a total determinate sentence of imprisonment for two years and six months following conviction on two counts of using a false instrument with intent it be accepted as genuine and four counts of fraud by false representation. His sentence expires in November 2023.
4. The Applicant was aged 54 at the time of sentencing. He is now 56 years old.
5. The Applicant was automatically released on licence on 19 August 2022. His licence was revoked on 22 August 2022, three days later, and he was returned to custody the following day. This is his first recall on this sentence and his first parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Applicant. It is an extensive application which comprises initial submissions of 12 pages together with 172 pages of supplementary information. The Applicant was asked to provide clarification of the basis for his application, and he subsequently provided a further 16 page submission.
7. The Applicant challenges the decision not to release him on three broad grounds: that it was not based on actual evidence, that it was wrong, and that it was unlawful.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.



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9. An oral hearing took place on 21 April 2023 before a single-member panel. Oral evidence was taken from the Applicant's Prison Offender Manager (**POM**), his Community Offender Manager (**COM**) and the Applicant. The Applicant was legally represented throughout the hearing.
10. In its decision, dated 23 April 2023, the panel did not direct the Applicant's release. The panel also considered the recall to have been appropriate. While the Applicant disputes this, the lawfulness of the recall is not a matter that can be considered within the scope of the set-aside rule.

The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.
12. The types of decisions eligible for set aside are set out in rule 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (rule 25(1)) or by an oral hearing panel which makes the decision on the papers (rule 21(7)).
13. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4)):
- a) a direction for release (or a decision not to direct release) would not have been given or made but for an error of law or fact, or
 - b) a direction for release would not have been given if information that had not been available to the Board had been available, or
 - c) a direction for release would not have been given if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

The reply on behalf of the Respondent

14. The Respondent has offered no representations in response to this application.

Discussion

15. I have taken great care to review the dossier, the decision, and the Applicant's extensive submissions seeking to set aside the decision of the panel not to direct his release. It is very clear that the Applicant is unhappy with the way in which his review has been conducted and disputes the reliability of the evidence before the panel, much of which he contends is fabricated.
16. However, there is nothing within the application that persuades me that there has been any error or law or fact that would have led to a different decision in this case.

17.The Applicant may disagree with the panel’s conclusion, but this does not, in itself, establish an error of law or fact.

Decision

18.The application for set-aside is refused.

Stefan Fafinski
3 July 2023